

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

BRANDON D. BOLLING,

Petitioner,

v.

USA,

Defendant.

Case No. 16-cv-00055-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Petitioner's Motion to Vacate, Set Aside or Correct Sentence (Doc. 1) pursuant to 28 U.S.C. § 2255. It is noted that Petitioner filed a previous motion under 28 U.S.C. § 2255, but withdrew the motion shortly after filing. *See Bolling v. USA*, 12-cv-1165-JPG. The Seventh Circuit Court of Appeals must certify a successive petition pursuant to 28 U.S.C. § 2255(h). *Curry v. United States*, 507 F.3d 603, 604 (7th Cir. 2007); *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996). However, since the Petitioner withdrew the motion and it was never considered by this Court, the Court has determined that the current motion is not a successive motion and can proceed without certification.

Administrative Order 176 provides that the Federal Public Defender's Office for the Southern District of Illinois (FPD) shall be appointed to handle motions to vacate or correct sentence based on *Johnson v. United States*, -- U.S. --, 135 S. Ct. 2551 (2015) (holding that an increased sentence under the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e) violates the right to due process). The case at bar is a 28 U.S.C. § 2255 based on *Johnson* as applied to the career offender guideline U.S.S.G. § 4B1.2(a)(2), which uses the same clause that was found unconstitutionally vague in the ACCA.

Therefore, pursuant to Administrative Order 176, the FPD is **APPOINTED** to represent the Petitioner in this matter. The Court assumes that the Petitioner financially qualifies for appointment of counsel based on the financial affidavit in his criminal proceedings and his subsequent and continuing incarceration. Upon entry of appearance, the Court **DIRECTS** the Clerk of Court to give the FPD sealed access to documents relating to the defendant. The FPD is **DIRECTED** to file an amended 28 U.S.C. § 2255 petition no later than 60 days after his entry of appearance. The Government's response to 28 U.S.C. § 2255 petition is **STAYED** until such time as the Court directs the Government to respond to the amended petition.

IT IS SO ORDERED.

DATED: 1/27/2016

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE